

THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. Nos.2948 of 2014 & 2030 of 2014

COMMON JUDGMENT:

M.A.C.M.A.No.2948 of 2014 is preferred by the appellant, who is the claimant before the Tribunal, assailing the order and decree of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial made in O.P. No.96 of 2010 dated 22.08.2013 on the ground of inadequacy of compensation.

2. M.A.C.M.A. No.2030 of 2014 is preferred by the appellants-Andhra Pradesh State Road Transport Corporation, who are the respondent Nos.2 and 3 before the Tribunal, assailing the very same order and decree of the Tribunal on the ground that the impugned Order and decree of the trial Court are contrary to law, evidence on record and illegal and that the compensation awarded by the Tribunal is excessive and exorbitant.

3. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

4. The claimants filed the M.V.O.P. under Section 166(1)(a) of the Motor Vehicles Act, alleging that on 04-04-2009 at about 5-30 p.m., while she was travelling in the Auto of her husband which was driven by him, when reached in front of Koratla bus stand out gate, RTC bus bearing No. AP.28.Z.2572 driven by its driver in rash and negligent manner gave dash to the auto, due to which, both the petitioner and her husband fell down and sustained injuries. Therefore, she laid a claim for Rs.4,50,000/- towards compensation under various heads.

5. The claim petition against the respondent No.1 was dismissed, since the petitioner made an endorsement on the petition that she is not interested to proceed against the respondent No.1.

6. Respondent No.2 remained ex parte; Respondent No.3 filed counter disputing the manner of accident as pleaded by the claimant.

7. In view of the pleadings of the claimants, the Tribunal raised the following issues:

- 1) Whether the accident had occurred due to rash and negligent driving of the offending vehicle bearing No.AP.28.Z.2572 by its driver?
- 2) Whether the petitioner is entitled for any compensation, if so, to what amount and from whom?
- 3) To what relief?

8. In order to prove the issues, claimant was examined herself as PW-1 and got examined PWs.2 to PW.4 and relied on Exs. A-1 to A-106. On behalf of respondents, no oral and documentary evidence has been produced.

9. On considering the oral and documentary evidence on record, the learned Tribunal has allowed the O.P. in part, directing the respondent Nos.2 and 3-Corporation to pay the compensation of Rs.3,00,000/- jointly and severally with interest @ 7.5% per annum from the date of petition till realisation with proportionate costs.

10. Heard the learned counsel for the claimant and the learned Standing Counsel for respondent Nos.2 and 3-Andhra Pradesh State Road Transport Corporation.

11. The learned counsel for the claimant has submitted that although the claimant, by way of evidence of P.Ws.1 to 4, and Exs.A.1 to A.106, established the fact that she sustained permanent disability due to the injuries caused in the accident, the Tribunal awarded meagre amount.

12. On the other hand, the learned Standing Counsel for the respondents-Corporation contended that the Tribunal failed to appreciate the oral and documentary evidence and misconstrued the documents and that the compensation awarded by the Tribunal is excessive and exorbitant.

13. With regard to the manner of accident, the Tribunal after considering the evidence of PWs.1 to 4 coupled with the documentary evidence on record, rightly came to the conclusion that the accident was occurred due to the rash and negligent driving of the RTC bus bearing No.AP.28.Z.2572.

14. With regard to the compensation, the evidence of petitioner shows that she sustained grievous injuries to her legs and despite surgery, the future complication which she likely to face. PW-3 who issued the disability certificate deposed about the inability of the petitioner to attend her regular works

without difficulty. PW-4 deposed about his giving treatment to the petitioner and prescribing medicines whenever the petitioner approached him with a complaint of pain. As per the evidence of PWs.2 to 4 and as per the wound certificate, it is clearly established that the injured leg of the petitioner was shortened and thus, she became handicapped. The Tribunal held that there is an occasion to see the petitioner physically when she came to the court during the enquiry and with a great difficulty, she could enter into the court hall by using a supporting stick and with a great difficulty she was able to sit on the table. Her left leg was totally disfigured and it is brought on record about the possible amputation of her left leg in future in case gangrene is formed. Therefore, the Tribunal awarded an amount of Rs.2,30,000-00 towards compensation for pain and suffering, continuing or permanent disability, loss of earning power, loss of life and loss of future and loss of love and affection etc., which appears to be too meagre. The Tribunal ought to have considered 60% of partial and permanent disability sustained by the petitioner as her left leg was totally damaged and possibility of amputation. Further she is not in a position to walk and sit. Hence I am of the opinion that 60%

disability can be taken into consideration. According to the petitioner, she used to earn Rs.4,500/- every month by attending her caste profession i.e., making of baskets and mats. Thus, the income of the petitioner can be taken at Rs.4,500/-. She was aged about 30 years at the time of accident. Then the appropriate multiplier in the light of the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***¹ would be “17”. Thus, the future loss of income due to 60% disability comes to $\text{Rs.}4,500 \times 12 \times 17 \times 60/100 = \text{Rs.}5,50,800/-$, which the petitioner/claimant is entitled for the disability sustained by her. The petitioner is also entitled for an amount of **Rs.25,000/-** towards pain and sufferance for the injuries sustained by her. Further the Tribunal rightly awarded **Rs.50,000/-** towards extra nourishment and hospital expenditure and as such, it cannot be disturbed. The petitioner is also entitled for **Rs.5,000/-** towards attendant charges. The Tribunal awarded Rs.2,000/- towards transport charges to hospital, which appears to be too meagre. Hence, an amount of **Rs.5,000/-** is awarded towards transportation

¹ 2009 ACJ 1298 (SC)

charges. Thus in all the claimant is entitled to the compensation as follows:

Sl.No.	Description of the item	Amount awarded
1.	Loss of earning capacity due to 60% permanent disability (Rs.4,500 x 12 x 17 x 60/100 = Rs.5,50,800/-)	5,50,800-00
2.	Pain and sufferance	Rs.25,000/-
3.	Extra nourishment and hospital expenditure	Rs.50,000/-
4.	Attendant charges	Rs.5,000/-
5.	Transportation charges	Rs.5,000/-
	Total:	Rs.6,35,800/-.

15. Coming to the M.A.C.M.A.No.2030 of 2014 filed by the respondents-Corporation, as stated above, after evaluating the oral and documentary evidence on record, the Tribunal rightly held that since the involvement of the RTC bus bearing No. AP.28.Z.2572 is proved, respondent Nos.2 and 3-Corporation is vicariously liable for the rash and negligent act of driving of their driver. There are no grounds to interfere with the cogent findings given by the Tribunal in this aspect. Hence, the appeal filed by the respondents-Corporation is liable to be dismissed.

16. In the result, the M.A.C.M.A. No.2948 of 2014 is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.3,00,000/- to **Rs.6,35,800/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of this Order till the date of realization against the respondent Nos. 2 and 3-Corporation. The amount shall be deposited by the respondent Nos.2 and 3-Corporation within a period of one month from the date of receipt of a copy of this order. The claimant shall pay deficit Court fee on the enhanced compensation, since the initial claim was for Rs.4,50,000/-. On such payment of court fee only, the claimant is entitled to withdraw the amount. There shall be no order as to costs. Whereas, M.A.C.M.A. No.2030 of 2014 filed by the respondent Nos.2 and 3-Corporation is dismissed. There shall be no order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

JUSTICE M.G. PRIYADARSINI

27.09.2022

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